

Jose Torres
Essex County Jail
354 Doremus Avenue
Newark, NJ 07105

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U.S. DISTRICT COURT
DISTRICT OF NEW JERSEY
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July 1, 2024

Hon. Brian R. Martinotti, U.S.D.J.
50 Walnut Street
Newark, NJ 07102

District Court case no.: 20-cr-418 (BRM)
Court of Appeal case no.: 23-2916

Motion to Correct Sentence

Dear Honorable Martinotti,

Fed. R. Crim. P. 35(a) permits the filing of a post-judgment motion to correct a sentence that resulted from arithmetical, *technical*, or other clear error.

“If a motion is a R. 35(a) motion, a district court lacks jurisdiction to entertain it if it is filed well beyond seven days after sentencing.” *United States v. Bigler*, 278 Fed. Appx. 193 (3d Cir. 2008). If the motion is filed on time, the District Court has seven days to file a response.

Torres submitted this motion on July 1, 2024, within seven days after sentencing. Therefore, the District Court has jurisdiction to hear this motion.

On October 11, 2023 Torres was convicted of four counts of Title 18 U.S.C.S. 2422(a).

On June 26, 2024, Torres was sentenced and the District Court cross referenced Torres to aggravated sexual abuse, Title U.S.C.S. 2241, using the United States Sentencing Guidelines (U.S.S.G.) 2A3.1. The application of this cross reference is incorrect as U.S.S.G. 2G1.1(c)(2) (2023 Federal Sentencing Guidelines Manual) requires that two elements be met in order to cross reference Torres: (1) interstate travel and (2) with intent to commit sexual abuse.

The intent element was never proved by the jury at trial, by the Government and the District Court. Therefore, application of the cross reference, U.S.S.G. 2A3.1, in sentencing Torres to aggravated sexual abuse was clear error.

In *United States v. Pollard*, 986 F.2d 44 (3d Cir. 1999), the Third Circuit affirmed the cross reference of the District Court “Because the kidnapping was perpetrated to facilitate a sexual scheme...”

The objection of the cross reference was raised by Torres in Torres’ Sentencing Memorandum and during the June 26, 2024 sentencing hearing. See transcript.

For the foregoing reasons, Torres requests the District Court to re-sentence Torres without the cross reference.

Respectfully Submitted,



Jose Torres

VIA REGULAR MAIL

cc: Bruce P. Keller, AUSA
Third Circuit Court of Appeals

Jose Lugo
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